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Statement of the case.

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## LEON v. GALCERAN.

1. A suit for mariners' wages *in personam* is maintainable at common law, and is within the exception of the ninth section of the Judiciary Act defining the admiralty jurisdiction.
2. It is no objection to the jurisdiction of a State court in such a suit that the process of sequestration or attachment has been used to bring the vessel on which the services were rendered under the dominion of the court, for the purpose of subjecting it to such judgment as might be rendered in the cause.
3. And a bond given to relieve the vessel so sequestered or attached is properly sued on in a State court.

GALCERAN and two other sailors brought each a suit *in personam*, in one of the State courts of Louisiana, against Maristany, owner of the schooner Gallego, to recover mariners' wages, and had the schooner, which was subject to a lien and "privilege" in their favor, according to the laws of Louisiana, similar in some respects to the principles of the maritime law, sequestered by the sheriff of the parish. The writ of sequestration was levied upon the schooner, which was afterwards released upon Maristany's giving a forthcoming bond, with one Leon as surety, for the return of the vessel to the sheriff on the final judgment. Judgments having been rendered by default against Maristany, the owner, *in personam*, for the amounts claimed, with the mariner's lien and privilege upon the property sequestered, a writ of *fi. fa.* was issued and demand made without effect, of the defendant in execution, by the sheriff, for the return of the property bonded. On the return of the sheriff that the property bonded could not be found, suits (the suits below) were brought in the same court by the three sailors against Leon, to enforce *in personam* against him the obligation of the forthcoming bonds, and judgments were rendered *in personam* against Leon, the surety, in their favor, for the amounts fixed by the original judgments. From the judgments thus rendered in the court below (that having been the highest court in Louisiana where a decision in the suit could be had), Leon took these writs of error.

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Arguments in favor of and against the jurisdiction.

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*Messrs. Cushing and Drew, for the plaintiff in error.*

Even if the State court could entertain a personal action against the owner, it had no jurisdiction over the vessel by conservatory writ and proceeding *in rem* to enforce a maritime lien by seizure before judgment. This is settled in *The Moses Taylor*,\* and in *The Hine v. Trevor*.† Having no jurisdiction, therefore, over the vessel in a proceeding *in rem*, the *judicial bond* given in that court for its delivery was null and void; and the court having no authority of law, or jurisdiction over the subject-matter, the *order* of the court to bond is also an absolute nullity.

“The rule, that as one binds himself he shall remain bound, may be true in mere conventional obligations, but the effect of *judicial bonds* must be tested by the law directing them to be taken. That which is superadded must be rejected and that which is omitted supplied. So, if there be no law authorizing such a bond to be taken, or if the prerequisites required for the taking thereof be not fulfilled, the bond will not bind; there is error, and the consideration fails.”‡

*Galceran, by brief signed propria persona, contra:*

The right of mariners to bring suits *in personam* against the owners of the vessel on which they have earned their wages, in the State courts, is expressly reserved to them by the Judiciary Act of 1789, under the proviso, “*saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it.*”

This is the right which has been exercised in this case. The State court had jurisdiction over the subject-matter of the controversy, inasmuch as the suits were brought *in personam*, which is clearly a common law remedy, and judgments obtained personally against the owner of the vessel.

The writ of sequestration was issued as a mesne or conservatory process, to preserve intact *pendente lite*, a lien and privilege granted by law, and to secure the presence of the

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\* 4 Wallace, 411.

† Ib. 555.

‡ 2 Hennen's Louisiana Digest, new edition, p. 1023, *verbo* 6.

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Argument against the jurisdiction.

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vessel within the territorial jurisdiction of the State court, until after the final judgments, to be then subjected to execution and sale to satisfy said judgments; and inasmuch as the writ was only resorted to as a means of enabling the State court more effectually to exercise its lawful jurisdiction and to secure in advance the execution of valid personal judgments on transitory property pledged by law to their payment, it follows that the writ was as lawful as the suit itself, to which indeed it was a mere appendage or incident, and as the writ of *fi. fa.* issued on the personal judgments and of which the writ of sequestration was the mere precursor.

The only thing which the Federal Constitution and the Judiciary Act of 1789 seem to have taken away from the State courts is the "cognizance of civil causes of admiralty and maritime jurisdiction," when the same are sought to be brought solely *in rem* against the offending vessel itself as a party defendant to the suit, according to the peculiar forms of the proceedings *in rem* of the admiralty courts, the judgments and sales of which are binding on the whole world, *erga omnes*.

The writ of sequestration has no analogy whatever with the admiralty process, as understood and defined by writers on admiralty law.\*

It cannot be pretended that vessels are not liable to seizure under executions issued upon judgments rendered by State courts. How, then, can it be contended that a writ of attachment or any other mesne or conservatory process, which only anticipates and subserves the writ of *fi. fa.*, cannot be lawfully resorted to, when sanctioned by the State law, to prevent the departure of the vessel *pendente lite*, in order to subject it afterwards under execution to the payment of the creditor's personal judgment, for which she is legally pledged?

Mr. Justice CLIFFORD delivered the opinion of the court.

Mariners in suits to recover their wages, may proceed against the owner or master of the ship *in personam*, or they

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\* See article 269 and following of the Louisiana Code of Practice.

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may proceed *in rem* against the ship or ship and freight, at their election.

Where the suit is *in rem* against the ship or ship and freight, the original jurisdiction of the controversy is exclusive in the District Courts, as provided by the ninth section of the Judiciary Act, but when the suit is *in personam* against the owner or master of the vessel, the mariner may proceed by libel in the District Court, or he may, at his election, proceed in an action at law either in the Circuit Court, if he and his debtor are citizens of different States, or in a State court as in other causes of action cognizable in the State and Federal courts exercising jurisdiction in common law cases, as provided in the eleventh section of the Judiciary Act.\*

He may have an action at law in the case supposed either in the Circuit Court or in a State court, because the common law, in such a case, is competent to give him a remedy, and wherever the common law is competent to give a party a remedy in such a case, the right to such a remedy is reserved and secured to suitors by the saving clause contained in the ninth section of the Judiciary Act.

Services, as mariners on board the schooner Gallego, were rendered by each of the appellees in these cases, and their claims for wages remaining unpaid, on the eighth of August, 1868, they severally brought suit *in personam* against Joseph Maristany, the sole owner of the schooner, to recover the respective amounts due to them as wages for their services as such mariners.

Claims of the kind create a lien upon the vessel under the laws of that State quite similar to the lien which arises in such cases under the maritime law. They accordingly applied to the court where the suits were returnable for writs of sequestration, and the same having been granted and placed in the hands of the sheriff for service, were levied upon the schooner as a security to respond to the judgments which the plaintiffs in the respective suits might recover

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\* 1 Stat. at Large, 78; The Belfast, 7 Wallace, 642, 644

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against the owner of the vessel, as the defendant in the several suits.

Such a writ when duly issued and served in such a case has substantially the same effect in the practice of the courts of that State as an attachment on mesne process in jurisdictions where a creditor is authorized to employ such a process to create a lien upon the property of his debtor as a security to respond to his judgment. Neither the writ of sequestration nor the process of attachment is a proceeding *in rem*, as known and practiced in the admiralty, nor do they bear any analogy whatever to such a proceeding, as the suit in all such cases is a suit against the owner of the property and not against the property as an offending thing, as in case where the libel is *in rem* in the Admiralty Court to enforce a maritime lien in the property.

Due notice was given of the suit to the defendant in each case, and he appeared and made defence. Pending the suits the schooner, which had previously been seized by the sheriff under the writ or writs of sequestration, was released on motion of the defendant in those suits and was delivered into his possession, he, the defendant, giving a bond to the sheriff, with surety conditioned to the effect that he would not send the property out of the jurisdiction of the court nor make any improper use of it, and that he would faithfully present the same in case such should be the decree of the court, or that he would satisfy such judgment as should be recovered in the suit.

Judgment was recovered by the plaintiff in each case against the owner of the schooner, and executions were issued on the respective judgments, and the same were placed in the hands of the sheriff. Unable to find any property of the debtor or to make the money the sheriff returned the execution unsatisfied, and the property bonded was duly demanded both of the principal obligor and of the present plaintiff in error, who was the surety in each of the forthcoming bonds.

Given, as the bonds were, on the release of the schooner, they became the substitute for the property, and the obligors

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refusing to return the same or to satisfy the judgments, the respective judgment creditors instituted suits against the surety in those bonds. Service having been duly made, the defendant appeared and filed an exception to the jurisdiction of the court in each case, upon the ground that the cause of action was a matter exclusively cognizable in the District Courts of the United States, but the court overruled the exception and gave judgment for the plaintiff, whereupon the defendant sued out a writ of error in each case and removed the same into this court.

Briefly stated, the defence in the court below was that the action was founded on a bond given for the sale of the schooner seized under admiralty process in a proceeding *in rem*, over which the State court had no jurisdiction *ratione materiæ*, "and that the bond was taken *coram non judice* and is void." Enough has already been remarked to show that the theory of fact assumed in the exception is not correct, as the respective suits instituted by the mariners were suits *in personam* against the owner of the schooner and not suits *in rem* against the vessel, as assumed in the exception. Were the fact as supposed, the conclusion assumed would follow, as it is well-settled law that common law remedies are not appropriate nor competent to enforce a maritime lien by a proceeding *in rem*, and consequently that the jurisdiction conferred upon the District Courts, so far as respects that mode of proceeding, is exclusive.

State legislatures have no authority to create a maritime lien, nor can they confer any jurisdiction upon a State court to enforce such a lien by a suit or proceeding *in rem*, as practiced in the admiralty courts, but whenever a maritime lien arises the injured party may pursue his remedy by a suit *in personam* or by a proceeding *in rem* at his election. Such a party may proceed *in rem* in the admiralty, and if he elects to pursue his remedy in that mode he cannot proceed in any other form, as the jurisdiction of the admiralty courts is exclusive in respect to that mode of proceeding, but such a party is not restricted to that mode of proceeding, even in the Admiralty Court, as he may waive his lien and proceed

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*in personam* against the owner or master of the vessel in the same jurisdiction, nor is he compelled to proceed in the admiralty at all, as he may resort to his common law remedy in the State courts, or in the Circuit Court, if he and his debtor are citizens of different States.

Suitors, by virtue of the saving clause in the ninth section of the Judiciary Act conferring jurisdiction in admiralty upon the District Courts, have the right of a common law remedy in all cases "where the common law is competent to give it," and the common law is as competent as the admiralty to give a remedy in all cases where the suit is *in personam* against the owner of the property.

Attempts have been made to show that the opinion of the court in the case of *The Moses Taylor*,\* and the opinion of the court in the case of *The Hine v. Trevor*,† are inconsistent with the views here expressed, that the court in those cases do not admit that a party in such a case can ever have a remedy in a State court, but it is clear that every such suggestion is without foundation, as plainly appears from the brief explanations given in each case by the justice who delivered the opinion of the court. Express reference is made in each of those cases to the clause in the ninth section of the Judiciary Act which gives to suitors the right of a common law remedy where the common law is competent to give it, and there is nothing in either opinion, when the language employed is properly applied to the subject-matter then under consideration, in the slightest degree inconsistent with the more elaborate exposition of the clause subsequently given in the opinion of the court in the case of *The Belfast*,‡ in which all the members of the court as then constituted concurred. Those explanations are a part of the respective opinions, and they expressly recognize the right of the suitor to his common law action and remedy by attachment as provided in the saving clause of the ninth section of the Judiciary Act.

Common law remedies are not competent to enforce a maritime lien by a proceeding *in rem*, and consequently the

\* 4 Wa ace, 411.

† Ib. 555.

‡ 7 Wallace, 642.

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original jurisdiction to enforce such a lien by that mode of proceeding is exclusive in the District Courts, which is precisely what was decided in each of the three cases to which reference is made. Authority, therefore, does not exist in a State court to hear and determine a suit *in rem*, founded upon a maritime contract in which a maritime lien arises, for the purpose of enforcing such a lien. Jurisdiction in such cases is exclusively in the District Courts, subject to appeal as provided in the acts of Congress, but such a lien does not arise in a contract for materials and supplies furnished to a vessel in her home port, and in respect to such contracts it is competent for the States to create such liens as their legislatures may deem just and expedient, not amounting to a regulation of commerce, and to enact reasonable rules and regulations prescribing the mode of their enforcement.\*

Even where a maritime lien arises the injured party, if he sees fit, may waive his lien and proceed by a libel *in personam* in the admiralty, or he may elect not to go into admiralty at all, and may resort to his common law remedy, as the plaintiffs in these cases did, in the subordinate court. They brought their suits in the State court against the owner of the schooner, as they had a right to do, and having obtained judgments against the defendant they might levy their executions upon any property belonging to him, not exempted from attachment and execution, which was situated in that jurisdiction.

Undoubtedly they might also resort to the bond given when the schooner was released, but they were not compelled to do so if the sheriff could find other property belonging to the debtor. By the return of the sheriff it appears that other property to satisfy the executions could not be found, and under those circumstances they brought these suits against the surety in those bonds, as they clearly had a right to do, whether the question is tested by the laws of Congress or the decisions of this court.

JUDGMENT AFFIRMED.

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\* The Belfast, 7 Wallace, 643; The St. Lawrence, 1 Black, 529.